

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. C. KENNEDY and A. J. KENNEDY,
Petitioners,
vs.
S. T. HILLS, as Trustee,
Respondent.

In the Matter of J. C. KENNEDY and A. J. KENNEDY, Doing Business Under the Firm Name of J. C. KENNEDY & SON, Bankrupts.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of a Certain Order of the United States District Court for the Eastern District of Washington, Southern Division.

Filed

APR - 8 1916

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*United States Circuit Court of Appeals for the Ninth
Circuit.*

In the Matter of J. C. KENNEDY and A. J. KENNEDY, Doing Business Under the Firm Name of J. C. KENNEDY & SON; the Marital Community Composed of J. C. KENNEDY and ELLEN KENNEDY, His Wife; and the Marital Community Composed of A. J. KENNEDY and ETTA F. KENNEDY, his wife,
Bankrupts.

Petition to Review in Bankruptcy.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Your petitioners, J. C. Kennedy and A. J. Kennedy, are citizens of the United States and reside in the City of Spokane, State of Washington, and were on the 8th day of February, 1915, duly adjudged bankrupt by the District Court of the United States for the Eastern District of Washington, Southern Division, and thereafter S. T. Hills was duly appointed trustee in bankruptcy and duly qualified and is still acting as such trustee.

That your petitioners and each of them are and were at the time the petition in bankruptcy was filed loggers engaged in the business of logging for the support of themselves and their families, and at the time said petition was filed they were the owners of as individuals, to J. C. Kennedy one team of mares, to A. J. Kennedy one team of geldings.

That in their schedules filed in said matter your

petitioners claimed said property as exempt under Subdivision 13, Section 563, Remington & Ballinger's Annotated Codes and Statutes of Washington; that thereafter the trustee refused to allow said horses as exempt and your petitioners duly filed objections to said trustee's report, a hearing was had thereon, and the referee in bankruptcy confirmed the report of said trustee. Thereafter a certificate of review was duly granted to the said District Court for the Eastern District of Washington by the said referee and that on or about the 8th day of February, 1916, an order was duly entered by the said district judge affirming and approving the order of said referee. A copy of said order of the district judge is hereto annexed.

That said order was and is erroneous as a matter of law in that:

(1) Your petitioners were entitled to have said horses set off to them as exempt.

(2) That Subdivision 13 of Section 563, Remington & Ballinger's Annotated Codes and Statutes of Washington allow your petitioners said horses as exempt.

WHEREFORE, Your petitioners, feeling aggrieved because of said order, ask that the same may be revised in matter of law by this Honorable Court as provided in section 24-b of the Bankruptcy Act and rules of practice in such case provide, and that the same may be reversed, and for such other and further relief as may be just and proper.

Dated at Spokane, Washington, February 21st,
1916.

J. C. KENNEDY,
A. J. KENNEDY,
Petitioners.

FABIAN B. DODDS,
901 Old Nat'l Bk. Bldg., Spokane, Wash.,
Atty. for Petitioners.

State of Washington,
County of Spokane,—ss.

J. C. Kennedy, the petitioner mentioned in the foregoing petition, does hereby make solemn oath that the statements of fact contained in said petition are true according to the best of his knowledge, information and belief.

J. C. KENNEDY.

Subscribed and sworn to before me this 21 day of February, 1916.

[Seal] C. W. OLSON,
Notary Public Residing at Spokane, Washington.

State of Washington,
County of Spokane,—ss.

A. J. Kennedy, the petitioner mentioned in the foregoing petition, does hereby make solemn oath that the statements of fact contained in said petition are true according to the best of his knowledge, information and belief.

A. J. KENNEDY.

Subscribed and sworn to before me this 21 day of February, 1916.

[Seal] G. F. BOESCH,
Notary Public Residing at Spokane, Washington.

*In the District Court of the United States, Eastern
District of Washington, Southern Division.*

No. 2106.

In the Matter of J. C. KENNEDY and A. J. KENNEDY, Doing Business Under the Firm Name of J. C. KENNEDY & SON et al.,

Bankrupts.

Order Affirming Referee as to Exemptions.

This cause came on to be heard upon the petition of the bankrupts, J. C. Kennedy and A. J. Kennedy to review the order of the referee denying as exempt, under Subdivision 13 of Section 563 of Remington & Ballinger's Annotated Codes and Statutes of Washington, two teams of horses, respectively claimed by said bankrupts as exempt under said section.

The undisputed facts are that J. C. Kennedy and A. J. Kennedy were, prior to the filing of the petition for adjudication herein, copartners engaged in the business of logging for the support of themselves and families; that each partner was the owner of a team of horses as his individual property.

The matter having been submitted upon briefs of counsel for the bankrupts and for the trustee and the Court being duly advised in the premises and having heretofore filed its opinion herein.

IT IS ORDERED that the order of the referee refusing to set aside, to each of said bankrupts above named, his team as exempt under said Subdivision 13 of Remington & Ballinger 563, be and the same hereby is affirmed.

The exception of each of said bankrupts to this order is allowed.

Dated this —— day of January, 1916.

(Signed) FRANK H. RUDKIN,
Judge.

Service of the within petition accepted and further notice of the filing of said petition waived.

Dated, Seattle, Washington, February 28th, 1916.

TREFETHEN, GRINSTEAD & LAUBE,
Attorneys for Trustee.

[Endorsed]: No. 2762. United States Circuit Court of Appeals for the Ninth Circuit. J. C. Kennedy and A. J. Kennedy, Petitioners, vs. S. T. Hills, as Trustee, Respondent. In the Matter of J. C. Kennedy and A. J. Kennedy, Doing Business Under the Firm Name of J. C. Kennedy & Son, Bankrupts. Petition for Revision. Under Section 24b of the Bankruptcy Act of Congress Approved July 1, 1898, to Revise, in Matter of Law, of a Certain Order of the United States District Court for the Eastern District of Washington, Southern Division.

Filed March 16, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. C. KENNEDY and A. J. KENNEDY,
Petitioners,

vs.

S. T. HILLS, as Trustee,
Respondent.

In the Matter of J. C. KENNEDY and A. J. KENNEDY, Doing Business Under the Firm Name of J. C. KENNEDY & SON, Bankrupts.

**TRANSCRIPT OF RECORD IN SUPPORT OF
PETITION FOR REVISION**

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
of a Certain Order of the United States District Court for the Eastern District of
Washington, Southern Division.

Names and Addresses of Attorneys of Record.

FABIAN B. DODDS, 901 Old National Bank Building,
Spokane, Washington,

Attorney for Petitioners.

TREFETHEN, GRINSTEAD & LAUBE, Coleman
Building, Seattle, Washington,

Attorneys for Respondent. [2*]

[Certificate of Referee in Bankruptcy.]

*In the District Court of the United States, Eastern
District of Washington, Southern Division.*

IN BANKRUPTCY—No. 427.

In the Matter of J. C. KENNEDY and A. J. KENNEDY,
Doing Business Under the Firm Name
of J. C. KENNEDY & SON et al.

To the Honorable FRANK H. RUDKIN, District
Judge:

I, A. C. Wilkinson, the Referee in Bankruptcy in charge of this proceeding, do hereby certify that in the course of such proceeding an order, a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 16th day of December, 1915. That on the 22d day of December, 1915, J. C. Kennedy and A. J. Kennedy, two of the bankrupts in such proceeding, feeling aggrieved thereat, filed a petition for review, which was granted.

That a summary of the evidence on which such order was based, is as follows:

*Page-number appearing at foot of page of original certified Transcript of Record in Support of Petition for Revision.

That at the time of the purchase of the two heavy horses and harness referred to in said order by J. C. Kennedy and A. J. Kennedy, respectively, said bankrupts and each of them, were solvent; that the said property was purchased with the individual money of the respective bankrupts above named and said horses and property were not put into the partnership business as partnership property of J. C. Kennedy & Son; that both of the bankrupts, J. C. Kennedy and A. J. Kennedy, were loggers, were engaged in the business of logging and had a family living with and dependent upon them and each of them; that the value of the geldings belonging to A. J. Kennedy is \$300; that the value of the mares belonging to J. C. Kennedy is \$350; that neither of the bankrupts were draymen, teamsters or farmers; that they have no exemptions and have claimed none as loggers except the horses herein mentioned.

That the question presented on this review is whether or not said J. C. Kennedy and A. J. Kennedy are entitled to said horses and harness as exempt property under Subdivision 13, Section 563, Remington & Ballinger's Annotated Codes and Statutes of Washington. [3]

I hand up herewith for the information of the Judge the following papers:

(1) The petition on which this certificate is granted.

(2) The original order complained of, dated December 16th, 1915.

Respectfully submitted,

(Signed) A. C. WILKINSON,
Referee in Bankruptcy.

[Endorsed]: No. 427. Referee's Certificate of Review. Filed at 10 A. M. Dec. 23, 1915. A. C. Wilkinson, Referee in Bankruptcy.

Filed in the U. S. District Court, Eastern Dist. of Washington. Dec. 23, 1915. W. H. Hare, Clerk. By Edwd. E. Cleaver, Deputy. [4]

In the District Court of the United States for the Eastern District of Washington, Southern Division.

No. 427.

In the Matter of J. C. KENNEDY and A. J. KENNEDY, Doing Business Under the Firm Name of J. C. KENNEDY & SON,

Bankrupts.

Opinion.

FABIAN B. DODDS, for Bankrupts.

TREFETHEN, GRINSTEAD & LAUBE, for Trustee.

RUDKIN, District Judge.

The bankrupts, J. C. Kennedy and A. J. Kennedy, are copartners engaged in the business of logging for the support of themselves and families, and each partner is the owner of a team of hōrse as his individual property used in that business. This is a

petition to review an order of the referee refusing to set aside his team to each of the bankrupts under the exemption laws of the State. The exemption is claimed under Subdivision 13 of Section 563, Rem. & Bal. Code, which exempts "to a person engaged in the business of logging for his support or that of his family, three yoke of work cattle and their yokes, and axes, chains, implements for the business, and camp equipments, not exceeding three hundred dollars, coin, in value." The extreme liberality with which exemption laws are usually construed will be readily conceded; but courts cannot legislate under the guise of liberal construction. My attention has been directed to authorities holding that the term "horses" includes mules and jackasses; that the term "cattle" includes horses; that the term "team with vehicle" includes a bicycle; that the term "carriage or buggy" includes an automobile; and if Subdivision 13 stood alone there would be force in the contention that the word cattle included horses. But when Section 563 is considered in its entirety it seems manifest that no such construction is permissible. [5]

Thus Subdivision 5 exempts to a farmer one span of horses or mules with harness; or two yoke of oxen with yokes and chains; Subdivision 7 exempts to a physician one horse with harness and buggy, together with other property; and Subdivision 12 exempts to a teamster or drayman his team consisting of one span of horses, or mules, or two yoke of oxen, or a horse and mule, with harness, yokes, and so

forth. It will thus be seen that in the section in question the legislature had in mind horses, mules, harness, oxen, work cattle, yokes, and chains. In the light of this it is idle to claim that the legislature did not use the term "three yoke of work cattle with their yokes" advisedly in Subdivision 13. The fact that oxen or work cattle may have been used extensively in the logging business when Section 563 was enacted, and that they are not so used to-day, cannot change the meaning of the statute because it has the same meaning to-day that it had at the time of its first enactment more than half a century ago. For this reason I am clearly of opinion that a team of horses is not exempt to a person engaged in the logging business and the order of the referee is affirmed.

[Endorsed]: No. 427. Opinion. Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 10, 1916. W. H. Hare, Clerk. By Edwd. E. Cleaver, Deputy. [6]

In the District Court of the United States, Eastern District of Washington, Southern Division.

No. 427.

In the Matter of J. C. KENNEDY and A. J. KENNEDY, Doing Business Under the Firm Name of J. C. KENNEDY & SON et al.

Order Affirming Referee as to Exemptions.

This cause came on to be heard upon the petition of the bankrupts J. C. Kennedy and A. J. Kennedy to review the order of the referee denying as ex-

empt, under Subdivision 13 of Section 563 of Remington & Ballinger's Annotated Codes and Statutes of Washington, two teams of horses, respectively claimed by said bankrupts as exempt under said section.

The undisputed facts are that J. C. Kennedy and A. J. Kennedy were, prior to the filing of the petition for adjudication herein, copartners engaged in the business of logging for the support of themselves and families; that each partner was the owner of a team of horses as his individual property.

The matter having been submitted on briefs of counsel for the bankrupts and for the trustee, and the Court being duly advised in the premises and having heretofore filed its opinion herein,

IT IS ORDERED that the order of the referee refusing to set aside, to each of said bankrupts above named his team as exempt under said Subdivision 13 of Remington & Ballinger's 563, be and the same hereby is affirmed.

The exception of each of said bankrupts to this order is allowed.

Dated this 19th day of January, 1916.

(Signed) FRANK H. RUDKIN,

Judge.

[Endorsed]: No. 427. Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 20, 1916. W. H. Hare, Clerk. By Edwd. E. Cleaver, Deputy.
[7] ..

*In the District Court of the United States for the
Eastern District of Washington, Southern Divi-
sion.*

No. 427.—IN BANKRUPTCY.

In the Matter of J. C. KENNEDY and A. J. KEN-
NEDY, Doing Business Under the Firm Name
of J. C. KENNEDY & SON, et al.,
Bankrupts.

**Stipulation [Re Transcript of Record on Petition for
Revision].**

WHEREAS, the bankrupts, J. C. Kennedy and
A. J. Kennedy, are each claiming a team of horses as
exempt, and whereas said bankrupts are about to
file a petition to revise in the Circuit Court of Ap-
peals for the Ninth Circuit, to revise an order of the
Honorable Frank H. Rudkin, District Judge, af-
firming an order of the referee in bankruptcy refus-
ing to allow said horses as exempt, said order being
entered on the 8th day of February, 1916, now, there-
fore,

IT IS STIPULATED, by and between Fabian B.
Dodds as attorney for said bankrupts and the peti-
tioners in said petition to revise, and Trefethen,
Grinstead and Laube, attorneys for the trustee and
respondents to said petition, that the record on re-
view shall consist of the following:

- (1) This stipulation.
- (2) The referee's certificate on review, which con-
tains the facts.

- (3) The order of the District Judge on which the petition to revise is based.
- (4) The opinion of the District Judge.

Dated February 28th, 1916.

TREFETHEN, GRINSTEAD & LAUBE,
Attorneys for Trustee.
FABIAN B. DODDS,
Attorney for Bankrupts.

[Endorsed]: No. 427. Stipulation. Filed in the U. S. District Court, Eastern District of Washington. Mar. 14, 1916. W. H. Hare, Clerk. By Edwd. E. Cleaver, Deputy. [8]

**[Certificate of Clerk, U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, for the
Eastern District of Washington, Southern Division.*

United States of America,
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages, numbered from one to eight, inclusive, as called for in the annexed stipulation, are true and correct copy of the record, as the same remains on file and of record in said District Court, and the same which I transmit, constitute my return to the annexed stipulation, lodged and filed in my office on the 14th day of March, A. D. 1916.

I also transmit and annex the original Stipulation in said action.

I further certify that the cost of preparing and certifying said record amounts to the sum of \$3.50 and the same has been paid in full by Fabian B. Dodds, solicitor for appellants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court at the city of Spokane, in said Eastern District of Washington, this 18th day of March, A. D. 1916, and of the Independence of the United States of America, the one hundred and fortieth.

[Seal]

W. H. HARE,

Clerk U. S. District Court, Eastern District of Washington. [9]

[Endorsed]: No. 2762. United States Circuit Court of Appeals for the Ninth Circuit. J. C. Kennedy and A. J. Kennedy, Petitioners, vs. S. T. Hills, as Trustee, Respondent. In the Matter of J. C. Kennedy and A. J. Kennedy, Doing Business Under the Firm Name of J. C. Kennedy & Son, Bankrupts. Transcript of Record in Support of Petition for Revision. Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of a Certain Order of the United States District Court for the Eastern District of Washington, Southern Division.

Filed March 23, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

